



# Arizona State Senate *Issue Brief*

November 3, 2006

## **Note to Reader:**

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## **ARIZONA DRIVING UNDER THE INFLUENCE (DUI): DUI Laws and DUI Courts**

### **INTRODUCTION**

It is unlawful for any person who is under the influence of intoxicating liquor or drugs to drive or be in actual physical control of a motor vehicle. This is commonly referred to as driving under the influence or DUI. If a person's blood alcohol concentration (BAC) is 0.08 or more, it is presumed in a trial that the person was under the influence of intoxicating liquor. A person also commits a DUI if they have a BAC of 0.08 or more within two hours of driving or being in actual physical control of the vehicle. If the vehicle is a commercial vehicle that requires the driver to obtain a commercial driver license, the licensee is presumed to be under the influence of intoxicating liquor if their BAC is 0.04 or more. For persons under 21 years of age, it is a class 1 misdemeanor to drive or be in actual physical control of a motor vehicle while there is any spirituous liquor in the person's body.

### **DUI, EXTREME DUI AND AGGRAVATED DUI**

In Arizona, there are several degrees of DUI violations that depend on the person's BAC and the circumstances of the violation. A person commits a DUI if the person has a BAC of 0.08 or more within two hours of driving or being in actual physical control of the vehicle and an extreme DUI if the person has a BAC of 0.15 or more within two hours of driving or being in actual physical control of a vehicle.

Additionally, Arizona penalizes certain DUI offenses depending on the person's BAC and the circumstances involved. For example, there are four primary ways to commit aggravated DUI. A person commits aggravated DUI if the person commits any type of DUI while the person's driver license or privilege to drive is suspended or otherwise restricted. A person also commits aggravated DUI if the person committed a third or subsequent DUI, extreme DUI or aggravated DUI or any combination of those offenses within the past 84 months. The third way a person can commit aggravated DUI is if the person commits DUI or extreme DUI with a person under the age of 15 in the vehicle. Finally, a person commits aggravated DUI if the person is required to equip a

motor vehicle with a certified ignition interlock device (see “*Arizona Driving Under the Influence [DUI] Laws: Ignition Interlock Device*” Arizona State Senate Issue Brief) and either 1) refuses to submit to a test given by a law enforcement officer to determine his or her BAC or 2) commits another type of DUI.

For each DUI violation, there is a minimum jail sentence, some of which may be suspended by the court if the person completes a court-ordered alcohol or other drug screening, education or treatment program. Education programs must provide at least 16 hours of classroom instruction, and treatment programs must provide at least 20 hours of participation in a group setting in addition to the education. Each DUI violation also carries a minimum fine and additional assessments. Assessments are paid to the Driving Under the Influence Abatement Fund (DUIAF), the Prison Construction and Operations Fund (PCOF) or the state General Fund (GF). In addition to the fines and assessments, there is an 80 percent plus \$5 surcharge added to the fines.

It is possible for a person to be charged and convicted of more than one DUI violation (for example, both extreme DUI and aggravated DUI) for the same series of acts. If more than one conviction arises out of the same series of acts, those convictions are not considered both a first and second DUI violation for the purpose of determining penalties. Additionally, the state is prohibited from dismissing all DUI charges unless there is an insufficient legal or factual basis to pursue those charges. This prevents plea bargaining or reducing all alcohol-related offenses to nonalcohol related offenses.

### ***Administrative Driver License Suspension***

In addition to other penalties related to driving privileges, there is an administrative driver license suspension that is handled by the Arizona Department of Transportation Motor Vehicle Division (MVD). When a law enforcement officer arrests a person for a DUI, the officer serves an order of suspension on the person on behalf of MVD and then submits a certified report to MVD. The person’s driver license is suspended 15 days after the order of

suspension is served, unless the person requests a hearing within that time period. A timely request for a hearing stays the suspension until the hearing is held. If the person does not request a hearing, or if MVD determines at the hearing to suspend the person’s driver license, the license is suspended for at least 90 consecutive days. However, if the person meets certain eligibility requirements, the suspension period may be reduced to 30 consecutive days, with the driver license restricted for another 60 consecutive days. A restricted license allows the licensee to drive between certain destinations during specified time periods.

If a person less than 18 years of age is convicted of a DUI, extreme DUI or driving while having any spirituous liquor in the person’s body, MVD immediately suspends the driver’s license or permit for two years. If a person under 18 years of age is convicted of an aggravated DUI, MVD suspends driving privileges for three years. For persons between 18 and 20 years of age convicted of driving while having any spirituous liquor in the person’s body, MVD immediately suspends driving privileges for two years.

In any of these instances, a court may order the person’s driving privileges to be restricted to driving between the person’s home, school and place of employment during specified periods of time. Beginning February 1, 2006, MVD must issue a special ignition interlock restricted driver license to licensees in these cases (see “*Arizona Driving Under the Influence [DUI] Laws: Ignition Interlock Device*” Arizona State Senate Issue Brief).

### ***Vehicle Impoundment for Extreme or Aggravated DUI***

In addition to all other penalties, when a law enforcement officer has probable cause to arrest a driver for extreme DUI or aggravated DUI, the vehicle will be either immobilized or impounded, unless all of the following requirements are met:

- vehicle registration is current.
- the driver is in compliance with automobile liability insurance requirements.

- the driver's spouse is with the driver, has a valid driver license, is not impaired by intoxicating liquor or other drugs, notifies the officer that the spouse will drive the vehicle home or to another place of safety and drives the vehicle as notified.

## ***Refusal To Submit***

Operating a motor vehicle in Arizona implies that the driver gives consent to a test of the driver's blood, breath, urine or other bodily substance to determine alcohol concentration or drug content. This is commonly referred to as the implied consent law. If a law enforcement officer has reasonable grounds to believe that a driver is committing a DUI, the officer may request the driver to submit to and successfully complete one or more BAC or drug content tests. If the driver refuses to submit to a test, the driver's license is suspended for 12 months. For a second or subsequent refusal within seven years, the person's driver license is suspended for two years.

Beginning February 1, 2006, after the driver license of a person who has refused to submit to a test has been suspended for at least 90 days, the person can apply to MVD for a special ignition interlock restricted driver license see "*Arizona Driving Under the Influence [DUI] Laws: Ignition Interlock Device*" Arizona State Senate Issue Brief).

## ***Vehicular Homicide***

Arizona does not have a vehicle-specific homicide statute. However, in some instances a person may be charged with a homicide offense, for example manslaughter or second degree murder, for causing the death of another while under the influence of drugs or alcohol. The person may also be charged with other criminal offenses for causing serious physical injury to another while under the influence of alcohol or drugs. Additionally, the motor vehicle may be alleged as a dangerous instrument or a BAC of 0.15 in certain criminal offenses may be used as an aggravating factor, both of which will provide for enhanced criminal penalties.

## ***DUI COURTS***

DUI courts are a fairly recent development both in Arizona and nationally. The objective of DUI courts is to target the offender's behavior with treatment of the addiction rather than jail or prison sentences. The court affords this opportunity through court interaction, probation supervision and participation in graduated levels of alcohol education and counseling. In general, the DUI court uses community providers for treatment of the participants who are chosen randomly in accordance with a research model. The DUI court program utilizes surveillance officers to make random visits to participants for breathalyzer testing.

## ***Penalties For DUI Violations***

The penalties for DUI violations depend on the type of violation as well as the number of violations the person has committed within a five-year period. Specific penalties can be found in the chart on the following page.

## ***ADDITIONAL RESOURCES***

- Mothers Against Drunk Driving (MADD)  
<http://www.madd.org/>
- Phoenix Police Department  
<http://www.ci.phoenix.az.us/POLICE//>
- Administrative Office of the Courts  
1501 W. Washington  
Phoenix, AZ 85007  
<http://www.supreme.state.az.us/>
- DUI Statutes: A.R.S., Title 28, Chapter 4, Article 3
- Administrative License Suspension Statutes: A.R.S., Title 28, Chapter 8, Article 6
- Vehicle Impoundment Statutes: A.R.S., Title 28, Chapter 8, Article 9
- Implied Consent and Test Statutes: A.R.S., Title 28, Chapter 4, Article 2
- "*Arizona Driving Under the Influence (DUI) Laws: Ignition Interlock Device*" Arizona State Senate Issue Brief,  
[www.azleg.gov/briefs.asp](http://www.azleg.gov/briefs.asp)

***Penalties for DUI violations:***

<b>Violation</b>	<b>BAC</b>	<b>Classification</b>	<b>Minimum jail Sentence <sup>1</sup></b>	<b>Fine of at least:</b>	<b>Additional assessments <sup>2</sup></b>	<b>Driving privileges <sup>3</sup></b>	<b>Alcohol or other drug screening, education, or treatment</b>	<b>Other penalties</b>
<b>DUI 1<sup>st</sup> violation</b>	0.08 thru 0.149	class 1 misdemeanor	10 consecutive days	\$250	\$500 to PCOF \$500 to GF		if completed, the court may suspend all but 24 hours of the jail sentence	possible community restitution
<b>DUI 2<sup>nd</sup> violation within 7 yrs</b>	0.08 thru 0.149	class 1 misdemeanor	90 days, with at least 30 consecutive	\$500	\$1250 to PCOF \$1250 to GF	revoked for 1 yr, with IID for 1 yr after driving privileges are restored	if completed, the court may suspend all but 30 days of the jail sentence	at least 30 hours community restitution
<b>Extreme DUI 1<sup>st</sup> violation</b>	0.15 or greater	class 1 misdemeanor	30 consecutive days	\$250	\$250 to DUIAF \$1000 to PCOF \$1000 to GF	IID for 1 yr	if completed, the court may suspend all but 10 days of the jail sentence	possible community restitution
<b>Extreme DUI 2<sup>nd</sup> violation within 7 yrs</b>	0.15 or greater	class 1 misdemeanor	120 days, with at least 60 consecutive	\$500	\$250 to DUIAF \$1250 to PCOF \$1250 to GF	revoked for 1 yr, with IID for 1 yr after driving privileges are restored	if completed, the court may suspend all but 60 days of the jail sentence	at least 30 hours community restitution
<b>Aggravated DUI 3<sup>rd</sup> or subsequent violation within 7 yrs</b>	0.08 or greater	class 4 felony	4 months in prison for 3 <sup>rd</sup> violation, 8 months in prison for subsequent	\$750	\$250 to DUIAF \$1500 to PCOF \$1500 to GF	revoked for 3 yrs, with IID for 1 yr after driving privileges are restored	required <sup>4</sup>	possible forfeiture of vehicle
<b>Aggravated DUI any DUI with an invalid driver license</b>	0.08 or greater	class 4 felony	4 months	\$750	\$250 to DUIAF \$1500 to PCOF \$1500 to GF	revoked for 3 yrs, with IID for 1 yr after driving privileges are restored	required <sup>4</sup>	possible forfeiture of vehicle
<b>Aggravated DUI any DUI with a person under 15 yrs old in the vehicle</b>	0.08 or greater	class 6 felony	10 or 30 consecutive days, depending on BAC	\$750	\$250 to DUIAF \$1500 to PCOF \$1500 to GF	revoked for 3 yrs, if BAC is 0.15 or higher, IID for 1 yr after driving privileges are restored <sup>5</sup>	required <sup>4</sup>	possible forfeiture of vehicle

1. Can be reduced – see Alcohol or other drug screening, education or treatment.
2. Assessments that are deposited in the PCOF or the GF are not subject to surcharges.
3. In cases where IID is required for 1 year, the court may extend the IID requirement for an additional year.
4. The court may order an additional jail sentence if the person fails to complete the program.
5. After completing a 90 day administrative driver license suspension, the person may apply to MVD for a special ignition interlock restricted driver license. This option becomes available beginning February 1, 2006.